

“He used to be talking (with Lambert) about this affair every time he was over. On the 9th November he was over—a Sunday.”

The 9th November was not a Sunday, but the 9th October was. It comes out in cross-examination that it was a mistake—near the bottom of page 25,—

“Mr. Meikle was at meeting on 8th November, so I recollect conversation with Lambert on 9th. I made mistake in month; it was October.

That, of course, is not much in the case of an ordinary witness, but in the case of Harvey it means a good deal as to absolute *bona fide* incapacity in point of time, because the Meikles had been arrested in the first week in November, and Harvey puts this conversation subsequent to their arrest. Of course, it saves his *bona fides* to admit his error as to the date, but renders it utterly impossible to place any reliance on him in point of time. The second is undoubtedly an error much more serious, because he puts certain events on the 17th October, when the crime is supposed to have been committed, and they undoubtedly did not happen upon that date. His inaccuracy is not so general and thorough as Judge Ward says on some points, although I have very little exception to take to the strictures in general. He says (page 29):—

“Harvey swore that Lambert did not leave Meikle’s house on the 17th October till 10 p.m. (in which he was contradicted both by Lambert and Gregg), and that he (Lambert) was at Meikle’s every other night, and sometimes two nights running (in which he was contradicted by Arthur Meikle and Mrs. Shiels, both witnesses for the defence).”

That is not so. His Honour has there made a general statement which is not quite correct. On page 24 he says he was there “every other night and sometimes two nights running until just a few days before Arthur was arrested.” That is a different thing from stating that he was there every night and sometimes two nights running during the whole period. He did not know he was there on the 17th October, and states that for some few days he had not been so regular. What I submit to your Honours with regard to Harvey’s mistake is this—that which is plain: that the most relevant matter which he swore to as taking place on the 17th really occurred on the 18th, and the calendar being nothing to him—he not being able to distinguish month from month—his testimony must be regarded as valueless on any question as regards a date. It was subsequently explained by him. The question was gone into very fully before Mr. Hawkins, S.M., in 1895, and a curious thing about it is that the Magistrate delivered a written judgment, in which he stated Harvey was the most careful and conscientious witness, and confessed to making a gross mistake as to the date, having referred to the 17th what really occurred on the 18th. In March, 1895, there was an information before Mr. Hawkins which was dismissed. Unfortunately we have not got the depositions, but my friend may possibly be able to secure them. The meagre report, which is all that I have seen, does not explain.

*Mr. Justice Cooper:* Was that the judgment Mr. Hawkins gave when he dismissed the information?

*Mr. Atkinson:* Yes, your Honour; that is the reason we have not the depositions here. The important point is that Harvey is dead and cannot be produced.

*Mr. Justice Cooper:* I suppose he was examined on the second occasion before Mr. Hawkins also?

*Mr. Atkinson:* He was in the Supreme Court too. I do not know whether the same counsel were engaged, but I presume when the matter came before Mr. Hawkins two months later Harvey’s explanation had been accepted, and the matter was not threshed out again. He does not explain on the deposition on which Lambert was committed nor on Lambert’s trial. What I understand from the evidence, independent from the depositions or papers, is that the witness’s parents are in Scotland, that he wrote a letter to Scotland and found out, three months after Meikle was in gaol, that he had sworn to the 17th what really occurred on the 18th. I am only suggesting reasons, of which Mr. Hawkins’s judgment is perhaps most conclusive, as to the *bona fides* of the witness. There was a stronger point against Harvey, because he swore to one conversation on that date which could not have happened, and he ought to have known by that reference that he was speaking of the wrong date. However, I will leave that matter there. I dare say my learned friend will be prepared to give direct evidence as to what Harvey said, or he will be free to cross-examine Meikle. What I wish to put with regard to Harvey’s mistake, Templeton’s mistake, and the other case is that there is nothing in Harvey’s evidence to suggest that he is wilfully misleading, and that Meikle had no part in his errors, for the reason that neither in this error or in any other is there any confirmation of one witness by another on a point that is proved to be erroneous. Then, there is Judge Ward’s statement that Harvey swore that he saw young Meikle at tea in the kitchen at 5 o’clock that afternoon. Young Meikle was too ill to be out that night, but Harvey swore that he saw him at tea, and he was not at tea that night. What His Honour says about Mrs. Shiels is very slight. She had been a servant to the Meikles just before he was committed, and she left shortly before he was committed. Judge Ward says:—

“Mrs. Shiels, another servant of the prisoner’s, swore that Lambert told her that he was to get £50 for putting sheep-skins of the company’s on Meikle’s land; but her account of the conversation as given before the jury varied most materially from that given in the R.M. Court.”

I am not going to labour the point, as I may have an opportunity of replying if my friend attaches weight to that. The prisoner was not represented by counsel at that stage in the lower Court. Mrs. Shiels made a statement; she does not say £50, but “money,” and she names Cameron and Stuart as the persons who were to give it, instead of Cameron and Troup. The report proceeds: “Arthur Meikle, of course, contradicted Lambert’s account.” That “of course” is, I submit, somewhat hard on the young fellow, who is not here, by the way, to answer for himself, as he died while Mr. Meikle was in gaol in 1890 from some chest ailment he suffered from. The contradiction of Harvey has been contradicted by the latter’s error as to date. Somewhat remarkably, Harvey is first shown to be worthless in his chronology, and then Arthur Meikle is blamed for disagreeing. At any rate, Mr. and Mrs. Meikle are here, and what he swore to in 1887 they are